purgation, he is reviving a theory which no competent authority has supported since Brunner proved that the English jury was derived, by way of Normandy, from the Frankish royal inquest.

Mr. Scott calls attention to the singular combination, in the Visigothic code, of highly refined rules of Roman law, civil and canon, with crude and barbaric German customs. It would have been well to call attention, as do Ureña and other legal historians, to the almost complete disappearance, after the Moorish conquest, of the Roman institutions and rules contained in the Visigothic code, and to the recrudescence in the Christian kingdoms of Northern Spain of many German institutions and modes of legal procedure which the Visigothic code did not recognize. As Ureña points out, facts like these indicate that many of the provisions of the Visigothic code represented ecclesiastical ideas which were not realized in the social life of Spain in the seventh century. We Americans are not the first people who have been content to put their moral aspirations in the statute book, "um es am Ende gehn zu lassen wie's Gott gefällt."

Mr. Scott does not indicate what text of the Visigothic code he has translated, but he has apparently used the edition published under the auspices of the Spanish Royal Academy in 1815. There is no evidence that he has even consulted the more carefully edited text which Zeumer prepared for the *Monumenta Germaniae,* and which appeared in 1894. The translation, so far as the reviewer has been able to determine by comparing a few passages, is not satisfactory. The seventh century Latin unquestionably presents some difficult problems, and the Castilian version does not always solve them. Mr. Scott, however, finds difficulties where there are none; and when he finds a difficulty he simply dodges it, using some general and vague phrase. For example, in 11, 2, 1 the legislator declares that a plea that the plaintiff failed to bring action against defendant's predecessor in title is no bar to suit against the present possessor unless the period of limitation has expired. The translator entirely misses the point, because he does not know what he could have learned from any elementary treatise on Roman law that *auctor* means predecessor in title.

This volume was prepared under the auspices of the Comparative Law Bureau of the American Bar Association. If the laudable effort of this Association to make accessible to English readers some of the more important monuments of European legal history is to be continued, greater care should be exercised in the selection of translators and editors.

M. S.

THE LAW APPLIED TO MOTOR VEHICLES. By CHARLES J. BABBITT. Washington, D. C.: JOHN BRYNE & Co. 1911. pp. 1217.

The body of law which may be properly called "automobile law," if confined strictly within its true limits, would require nothing like 1217 pages. The laws exclusively applicable to automobiles are few in number, relating to but few topics, and consist largely of statutes, and the principles governing their interpretation; of the constitutional questions involved in such statutes and the decisions dealing with such questions; of the question of the wisdom of the rules laid down in some motor vehicle statutes and, incidentally, but only incidentally, brief statements showing how well known principles of law have been applied to motor vehicles.

Much that is customarily put in the books, improperly entitled "the law of motor vehicles," has no more to do with motor vehicles than it has to do with a hundred other things. For example, there is no such thing as the "motor vehicle law of negligence." The same law of negligence applies to motor vehicles as applies to threshing machines. It would seem unwarranted to fill up 160 pages of text book, intended for the use of practicing lawyers, with copious citations from the general law of negligence,—citations as applicable to the sewing machine as to the carrying-machine. The law of negligence cannot properly be appropriated for use by a treatise on automobile law. It applies to every piece of machinery, to every instrument of commerce, and to every action of man. Why, therefore, should it be repeated in a book on automobile law? Are there not enough text books devoted exclusively to the law of negligence! Can it not be taken for granted that the law of negligence applies to the motor vehicle? Of course it does!

The author may be taken to have confessed, both in the title of the work,—"The Law Applied to Motor Vehicles,"—and in his "Preface," that he has not confined himself to the incidents of law peculiar to automobiles, but has made a compendium of some of the principles of some general branches of law, has stated their application to motor vehicles, and has compiled a text book largely consisting of quotations from statutes and the opinions of the Courts. In his preface, the author admits the point made in this REVIEW, as follows:

"A dominating purpose of this treatise is to demonstrate that no new principle of law has been invoked, nor an old one strained, to encounter the unaccustomed situation in any of its aspects."

Doubtless the author has succeeded in what he states to have been his purpose; but it was unnecessary. It might have been assumed that lawyers would admit it. It is to the author's credit that he has accomplished in his book what he set out to do. How far the accomplishment is valuable is another question. The book may be valuable as a collection of authorities along with other such collections. The author seems to have disclaimed any intention of putting anything of his own in the book. He says: "In so far as the circumstances permit, the phraseology of the entire book is in the *exact language* of the writers cited, the author not venturing, by version of his own, to tinge interpretations of the law by the masters in jurisprudence, upon whom reliance is placed." If there were room for another collection of cases illustrating principles as old as the common law, then this book would occupy some of that room. But it is to be regretted that the author made every effort to refrain from giving his own thought, in order to increase the usefulness of the book. It is very well to cite in their "exact language" the pronouncements of the courts and of other text writers; but the difficulty is that, frequently, these pronouncements are inconsistent, and it then becomes of the utmost importance that an author should demonstrate what the *sound* principle is and what the *weight* of authority may be. Furthermore, careful as the writer claims to have been in refraining from expressing any thought of his own, he has been obliged, unconsciously, doubtless, to make inferences from the words of the "masters," and, doubtless because such inferences were unconscious on the part of the author, they exhibit some evidence of lack of due consideration of the very authorities from which quotations are made. For example, he says in Section 161:

"Whenever a motor vehicle is engaged in *business* between one state and another state, then the national control in matters of interstate commerce applies in the same degree as such control would apply to any other class of vehicles engaged in the same occupation;"

and then the author cites

U. S. Const., Art. I, Sec. 8.

But, unhappily, the United States Constitution, in Article I, Section 8, does not say anything of the kind here attributed to it. The word "business" which he italicizes and makes the pivotal point of his proposition is not used in that portion of the Constitution. On the contrary, there are ample authorities to the effect that that portion of the Constitution is not confined in its application to "business." A very regrettable result of the author's caution in refraining to apply his own thought and study to the authorities is manifested when he says in this same Section 161:

"As to what constitutes 'commerce' of an interstate character, the United States Supreme Court has within a short time given a definition, in which can be found no place to include the pleasure vehicle engaged in interstate travel. In *Adair* v. *The United States,* 208 U. S. 161, 176, Mr. Justice Harlan says"—

and then he quotes Mr. Justice Harlan at considerable length. The fact is that Mr. Justice Harlan only repeats in other words the definition which has been laid down in at least twenty cases formerly decided by the Supreme Court, in some of which pleasure conveyances were expressly *included.* So far from the law being what the author, by inference, seems to claim, we are inclined to believe that the law is just the reverse, and in order to indicate the danger of attempting to compile a text book by quoting *some* portions of *some* decisions, while refraining from applying study to *all* the portions of all the important decisions bearing on the subject, it may be well to refer to the case of

Belden v. *Chase,* 150 U. S. 674,

where it was held that a purely pleasure steam yacht, going from the waters of one state into those of another without any *business* errand whatever, was engaged in "interstate commerce" within the meaning of the United States Constitution, Article I, Section 8, to which the author refers with so much confidence, and that "interstate commerce" was really only interstate intercourse in any case. Other cases demonstrating the same proposition are:

Moran v. *New Orleans,* 112 U. S. 69;
Lottery Cases, 188 U. S., 321;
Gibbons v. *Ogden,* 9 Wheaton, 1;
Sinnott v. *Davenport,* 22 Howard, 227;
In re Debs, 158 U. S. 564.

So painstaking and laborious has been the undertaking of the author of this work, that it would seem that he is in a position to throw the vast amount of material which he has collected into the furnace of his own thought and there fuse them into a product which should be in reality "the Law of Automobiles," and which should bear the impress of his undoubtedly wide study and large intelligence.

C. T. T.